TAI SIAT FAH (THE LAWFUL WIDOW AND DEPENDANT OF CHANG KENG LOOY, DECEASED) & 4 ORS.

v.

THE LAWFUL PERSONAL REPRESENTATIVE OF BADRUL HISHAM BIN HASHIM

HIGH COURT MALAYA, JOHOR BAHRU
DATO' HJ. ABDUL MALIK BIN HJ. ISHAK J
[CIVIL APPEAL NO. 12-24 OF 1993]
20 FEBRUARY 1995

***DAMAGES**: Claim for bereavement and loss of support under s. 7 Civil Law Act 1956 Claim arising out of fatal road accident - Dependant paid compensation under s. 8(a) Workmen's Compensation Act 1952 - Whether dependants can file claim under s. 7 Civil Law Act - Whether amount of compensation paid under Workmen's Compensation Act deductible from any award of damages under Civil Law Act - Comparison between provisions of Workmen's Compensation Act and Employees' Social Security Act 1969 - Whether compensation paid under Workmen's Compensation Act a bar to subsequent claim under Civil Law Act.*

***EVIDENCE**: Proof of payment under s. 8(a) Workmen's Compensation Act included in agreed bundle of documents - Whether Labour Officer need be called to prove payment of compensation.*

***INTERPRETATION OF STATUTES**: Basic principles of interpretation of statutes - Canons of construction.*

The first appellant/plaintiff, the widow of the deceased, filed a dependency claim in the Sessions Court for herself and as next friend of her four minor children. The claim was filed under s. 7 of the Civil Law Act 1956 (the Act). The first appellant made a further claim for bereavement under s. 7(3A) of the Act.

Counsel for the respondent/defendant raised a preliminary objection and argued that since the appellants/plaintiffs have received compensation under s. 8(a) of the Workmen's Compensation Act 1952, they should be barred from making another claim under the Act. Counsel for the appellants, relying on the case of *Ward v. Malaysian Airlines System Berhad*, argued to the contrary and further said that the respondent should call the Labour Office to prove that the compensation had been paid.

The learned Sessions Court Judge found in favour of the respondent on the preliminary issue and the appellants appealed.

Held:

[1] It is evident from the agreed supplementary bundle that the appellants/plaintiffs received RM14,400 as compensation under s. 8(a) of the Workmen's Compensation Act 1952. The authorities show that once a document forms part of an agreed bundle of documents it stands automatically proved as to its existence, due execution and contents without having to be proved and no evidence need or had to be produced to formally put in the document in question. Put simply, agreed documents are receivable in evidence.

[2] The basic principle in the interpretation of statutes is to apply the words and phrases of a statute in their ordinary meaning and to construe the phrases and sentences according to the rules of grammar. Where a statutory provision is couched in clear and unequivocal terms tantamount to and capable of only one meaning, that meaning must be adhered to and enforced no matter how harsh the result may be.

[3] Applying *Ward's* case to the present appeal, the compensation paid to the appellants/plaintiffs are not deductible and they are caught under proviso (i)(d) of s. 7(3) of the Act which clearly lays down that any sum which has been paid under written law relating to the payment of any compensation shall not be taken into account in assessing damages.

[4] The plain language of s. 7(3)(i)(d) of the Act would give rise to only one conclusion and it is that compensation under the Workmen's Compensation Act 1952 will not bar a dependency claim under s. 7 of the Act in respect of loss of support and damages for bereavement under s. 7(3A) of the Act, nor will such compensation be said to be deductible. In the circumstances, the learned Sessions Court Judge was wrong to have allowed the respondent's preliminary objection.

[Appeal allowed with costs. Case remitted to Sessions Court for trial of the main action].

Cases referred to:
Yap Choo Hoo v. Tahir bin Yasin & Anor. [1970] 2 MLJ 138 ***(refd)***
Goh Ya Tian v. Tan Song Gou & Ors. [1981] 2 MLJ 317 ***(refd)***
Koay Tuan & Anor. v. Eng Chong How & Anor. [1987] 1 MLJ 422 ***(dist)***
Chin Choy & Ors. v. Collector of Stamp Duties [1979] 1 MLJ 69 FC ***(cit)***
Kahu Illias v. N.V. Vereenigde Nederlandsche Scheepvaartmaatschappij [1961] 27 MLJ 275 ***(dist)***
Low Swee Fong v. Gammon (Malaya) 1959 LTD [1962] 28 MLJ 295 ***(dist)***
Azimah bte Ismail & Ors. v. Chang Ng Pang & Ors. [1985] 2 MLJ 152 ***(dist)***
Cartledge v. E. Jopling & Sons Ltd. [1963] AC 758 ***(refd)***
R v. Ramsgate (Inhabitants) [1827] 6 B & C 712 ***(refd)***
Ward v. Malaysian Airlines System Berhad [1991] 3 MLJ 317 SC ***(foll)***
Sutters v. Briggs [1922] 1 AC 1 ***(foll)***
Stock v. Frank Jones (Tipton) Ltd. [1978] 1 ALL ER 948 [1978] 1 WLR 231 ***(foll)***

Legislation referred to:
Civil Law Act, 1956, ss. 7, 7(3A), 7(3), 7(3)(i)(d), 7(5), 28A(1)(a)
Employees' Social Security Act, 1969, ss. 15(1)(c), 31, 42
Road Transport Act, 1987, s. 96
Stamp Ordinance s. 12A
Workmen's Compensation Act, 1952, ss. 8(a), 20, 20(a)

Other source referred to:
Mozley and Whiteley's Law Dictionary, John B. Saunders, 9th Edn.

For the appellants - R.K. Nathan; M/s. R.K. Nathan & Co.
For the respondent - Ibrahim Hashim; M/s. Hassan Ibrahim & Co.

JUDGMENT

Hj. Abdul Malik bin Hj. Ishak J:

The first appellant/plaintiff, the widow of the deceased (Chang Keng Looy) filed a dependency claim under s. 7 of the Civil Law Act, 1956 ("CL Act") in respect of loss of support and damages for bereavement under s. 7(3A) of the CL Act for herself and as next friend of her four minor children in the Sessions Court, Johor Bahru ("the Sessions Court")

arising out of a fatal road accident between motor lorry JV 8975 driven by the deceased and a motor car JAW 9233 driven by Badrul Hisham bin Hashim (also deceased) in the opposite direction.

A preliminary objection was raised (by Counsel acting for the insurance) before the Sessions Court which gave decision in favour of the respondent/defendant. This appeal is only concerned with that preliminary objection.

The preliminary objection is pleaded and set out clearly in para. 6 of the amended statement of defence and it is in the following terms:

> 6. Jika sekiranya penghakiman diberikan kepada plaintif (appellants here), pihak defendan (respondent here) secara alternatif akan meminta Mahkamah tolakan (set off) sebanyak RM14,400 yang telah dibayar kepada tanggungan pihak plaintif (appellants here) dan/atau akan tuntut balas jumlah tersebut.

In reply, the appellants/plaintiffs filed, at para. 4 of their reply to the amended statement of defence, a curt reply to the following effect:

> 4. Mengikut seksyen 7(3)(i)(d) Akta Undang-Undang Sibil 1956 defendann (respondent here) adalah dihalang daripada tolakan (set-off) sebanyak RM14,400 yang mana telah dibayar melalui pampasan.

In a nutshell, the preliminary objection can be summarised as follows. The appellants/plaintiffs as dependants having received compensation under the Workmen's Compensation Act, 1952 should be barred from making another claim under the CL Act.

It is evident from the agreed supplementary bundle that the appellants/plaintiffs received RM14,400 being the maximum amount, as compensation under s. 8(a) of the Workmen's Compensation Act, 1952. Dato R.K. Nathan for the appellants/plaintiffs sought to argue that the respondent/defendant should call the Labour Officer to prove that such compensation was made but, with respect, he was in error there. The authorities show that once a document forms part of an agreed bundle of documents it stood automatically proved as to its existence, due execution and contents without having to be proved and that no evidence needed or had to be produced to formally put in the document in question. Put simply, agreed documents are receivable in evidence (*Yap Choo Hoo v. Tahir bin Yasin & Anor.* [1970] 2 MLJ 138 and *Goh Ya Tian v. Tan Song Gou & Ors.* [1981] 2 MLJ 317).

The appellants/plaintiffs argued through Dato' R.K. Nathan that compensation under the Workmen's Compensation Act, 1952 should not be a bar to claims for dependency in respect of loss of support and damages for bereavement under the CL Act. An attempt was made to differentiate *Koay Tuan & Anor. v. Eng Chong How & Anor.* [1987] 1 MLJ 422 with the facts of the present appeal. In *Koay Tuan's* case (*supra*) the award of general damages in respect of a dependency claim under s. 7 of the CL Act, being intended to compensate the dependants of the deceased in respect of loss of support was said to be similar to "dependants' benefit" within the meaning of s. 15(1)(c) of the Employees' Social Security Act, 1969 ("Socso Act") and, consequently, it was also caught within the meaning of s. 42 of the Socso Act. It was further pressed before me that *Koay Tuan's* case (*supra*) rested on the interpretation of the Socso Act, in particular s. 42 thereof and that the deceased there was insured under Socso by his employer unlike the deceased in the present appeal. Section 42 of the Socso Act reads thus:

> When a person is entitled to any part of the benefits provided by this Act, he shall not be entitled to receive any similar benefit admissible under the provisions of any other written law.

In delivering the judgment of *Koay Tuan's* case (*supra*), Edgar Joseph Jr. J (as he then was and now a senior member of the Federal Court) said:

> The words "similar benefit" in s. 42 of the Act must mean a benefit similar in kind. There is authority for saying that the expression "of a kind similar to" means similar in the purpose for which it is used (*Jewish Blind Society v. Henning* [1961] 1 ALL ER 47; *Walker v. Wood* [1962] 3 ALL ER 188, 190). By the same token, both categories of payment are intended for the benefit of dependants of the deceased.

On the other end of the scale, Encik Ibrahim Hashim for the respondent/defendant urged me to draw a parallel with *Koay Tuan's* case (*supra*) to the facts of the present appeal even though the appellants/plaintiffs here received compensation under the Workmen's Compensation Act, 1952 and not under the Socso Act. He urged me to conclude that the appellants/plaintiffs here should be barred from claiming under the CL Act and that the decision of the Sessions Court on the preliminary point should be upheld.

Encik Ibrahim Hashim further advanced an argument that under s. 20(a) of the Workmen's Compensation Act, 1952, a workman is not entitled to recover both damages and compensation and the use of the words therein like "shall not be entitled to recover both damages and compensation" meant that an option must be made - either to proceed to recover damages or compensation. Both remedies are not available to the workman. He cited and relied upon *Chin Choy & Ors. v. Collector of Stamp Duties* [1979] 1 MLJ 69 FC, where Chang Min Tat FJ (as he then was) in delivering the judgment of the Federal Court held that there was no ambiguity whatsoever in the words and meaning of s. 12A of the Stamp Ordinance and the Collector of Stamp Duty was therefore justified, where he has reason to believe that the consideration mentioned in the transfer did not reflect the proper market value at the date of the execution of the transfer, in imposing the duty on what he properly and reasonably considered to be the market value of the property at the date of the execution of the transfer. Likewise, so submitted Encik Ibrahim Hashim there is no ambiguity in s. 20(a) of the Workmen's Compensation Act, 1952 and effect should be given to it.

Next, the case of *Kahu Illias v. N.V. Vereenigde Nederlandsche Scheepvaartmaatschappij* [1961] 27 MLJ 275 was referred to and Encik Ibrahim Hashim narrated the facts and briefly the facts were. The plaintiff, a stevedore employed by the Singapore Harbour Board, was seriously injured when some bales of rubber fell on him while he was working in the hold of the defendants' vessel. He accepted and received RM12,780 as compensation from his employers under the Workmen's Compensation Ordinance in full settlement of his claim. He now commenced proceedings against the owners of the vessel in which the accident occurred. The main point for consideration before the Singapore Court was whether the plaintiff had recovered compensation from his employer within the meaning of s. 29(a) of the Singapore Workmen's Compensation Ordinance. Buttrose J, in a short judgment, held that as the payment by the Singapore Harbour Board and the acceptance by the plaintiff were entirely unqualified and unconditional the plaintiff cannot now recover damages from the defendants. Though on the facts *Kahu Illias* (*supra*) are poles apart from the present appeal, yet Encik Ibrahim Hashim sought to apply by analogy and implore this Court to hold the same views as Buttrose J did in that case. Here, the appellants/plaintiffs having received the compensation under the Workmen's Compensation Act, 1952 filed an action against the insurance for damages not under the Workmen's Compensation Act, 1952 but under the CL Act and, without a doubt, this is the distinguishing feature in the present appeal - different from that of *Kahu Illias* (*supra*).

In *Low Swee Fong v. Gammon (Malaya)* 1959 LTD [1962] 28 MLJ 295, Wee Chong Jin J (as he then was) construed *per incuriam* the word "recover" in s. 20 of the Singapore Workmen's Compensation Ordinance to mean recover as a whole and not in part and, applying this case, Encik Ibrahim Hashim submitted that the appellants/plaintiffs in the present appeal had received the full maximum compensation under the Workmen's Compensation Act, 1952 and should, consequently, be barred from claiming under the CL Act. But in *Low Swee Fong's* case (*supra*) the Court there held that there was no evidence that the moneys the plaintiff purportedly received from his employer were received by him as Workmen's Compensation payments.

It was further argued that the Sessions Court had to consider s. 7(5) of the CL Act and interpret it accordingly. For convenience, s. 7(5) of the CL Act enacts as follows:

> Not more than one action shall be brought for in respect of the same subject matter of complaint, and every such action shall be brought within three years after the death of the person deceased.

Encik Ibrahim Hashim submitted that the word 'action' in s. 7(5) of the CL Act was not defined in the Act and he drew the Court's attention to *Mozley and Whiteley's Law Dictionary*, Ninth Edn. by John B. Saunders Esq where the word "action" was defined as:

> The lawful demand of one's right. It is defined by Justinian, *jus prosequendi in judicio quod alicui debetur*, a right of prosecuting, in a judicial proceeding, that which is due to any one. Now generally used to denote the actual pursuit of this right, or the means of its exercise. In this view, i.e, with reference to the right enforced or redress obtained, actions are divided into civil and penal, and also into real, personal, and mixed. (Actions Civil and Penal; Actions Mixed; Actions Real and Personal).

and he argued (as I understood him) that both the actions under the Workmen's Compensation Act, 1952 and the CL Act relate to the same subject matter and the Sessions Court had correctly appraised the situation and concluded that there was merit to the preliminary objection and, consequently, gave decision in favour of the respondent/defendant.

The Sessions Court distinguished *Azimah bte Ismail & Ors. v. Chang Ng Pang & Ors.* [1985] 2 MLJ 152 from the present appeal strictly on the facts. In *Azimah's* case (*supra*), there was no evidence that the widow had applied to settle any question under s. 27(2) of the Workmen's Compensation Act, 1952 and the preliminary enquiry there was held under s. 27(3) of the same Act. Again, the memorandum of agreement signed between the widow and the fourth defendant was never recorded under s. 28 of the same Act.

Consequently, the Court in that case held that the deposit of the workmen's compensation could not be said to be such damages recovered in any Court. Put shortly, in *Azimah's* case (*supra*), there was no evidence before the Court there that compensation was paid and received unlike the present appeal where there was ample evidence that the appellants/plaintiffs had received the maximum compensation under the Workmen's Compensation Act, 1952.

In considering the preliminary point raised in this appeal, I have taken into account the relevant provisions of the Workmen's Compensation Act, 1952, the CL Act and also the Socso Act. I am constrained to say that from the language employed in these provisions couched in clear and unequivocal terms tantamount and are capable of only one meaning, that meaning must be adhered and enforced therein no matter how harsh the result may be (see *Cartledge v. E. Jopling & Sons Ltd.* [1963] AC 758; [1963] 1 ALL ER 341; [1963] 3 WLR 210). Yet, another basic principle in the interpretation of statutes would be this. Firstly,

to apply the words and phrases of a statute in their ordinary meaning, and secondly, to construe the phrases and sentences according to the rules of grammar. As Bayley J rightly stated in *R v. Ramsgate (Inhabitants)* [1827] 6 B & C 712: "It is very desirable in all cases to adhere to the words of an Act of Parliament, giving to them that sense which is their natural import in the order in which they are placed."

In the present appeal, Encik Ibrahim Hashim represented the third party, namely the insurance company. It is his case and as part of his submission he relied heavily on s. 20(a) of the Workmen's Compensation Act, 1952 to bring home the point that the plain and unambiguous meaning to that section would bar the appellants/plaintiffs from claiming under the CL Act after being compensated under the Workmen's Compensation Act, 1952. Put in a nutshell and for fear of repetition, he submitted that the appellants/plaintiffs have an option of whether to claim under the Workmen's Compensation Act, 1952 or under the CL Act and the appellants/plaintiffs cannot exercise both options at any one time. He failed to take into account when relying on *Koay Tuan's* case (*supra*) that the definite injunctive strictures in s. 31 of the Socso Act are absent in s. 20(a) of the Workmen's Compensation Act, 1952. That injunctive constraints in s. 31 of the Socso Act are as follows:

> An insured person or his dependants shall not be entitled to receive or recover from the employer of the insured person -
>
> (i) any compensation under the Workmen's Compensation Ordinance, 1952, or
>
> (ii) damages under any other law for the time being in force, in respect of an employment injury sustained as an employee under this Act.

To add insult to injury s. 42 of the Socso Act contains a further impediment and it is as follows:

> When a person is entitled to any of the benefits provided by this Act, he shall not be entitled to receive any similar benefit admissible under the provisions of any other written law.

In sharp contrast is s. 20 of the Workmen's Compensation Act, 1952 where it is stated that:

> Where any injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof -
>
> (a) the workman may take proceedings against that person to recover damages and may claim against any person liable to pay compensation under this Act, but he shall not be entitled to recover both damages and compensation; and
>
> (b) if the workman has recovered compensation under this Act, the person by whom the compensation was paid, and any person who has been called upon to pay an indemnity under s. 19(2) shall be entitled to be indemnified by the person so liable to pay damages as aforesaid and all questions as to the right to and amount of any such indemnity may, in default of agreement, be settled by an Arbitrator.

It is now crystal clear that like Encik Ibrahim Hashim, the Sessions Court too fell in error in blindly following *Koay Tuan's* case (*supra*) without taking into consideration and weighing in a balance the constraints in ss. 31 and 42 of the Socso Act when construing the Workmen's Compensation Act, 1952.

Dato' R.K. Nathan submitted that the appellants/plaintiffs had to take an insurance, more in the nature of a compulsory insurance under s. 96 of the Road Transport Act, 1987. He referred to and relied heavily on the recent decision of the then Supreme Court in *Ward v. Malaysian*

Airlines System Berhad [1991] 3 MLJ 317 SC where the appellant, an Australian national was employed by the respondents as a pilot, suffered a head injury and other minor injuries as a result of an emergency crash landing of the aircraft he was piloting in Sarawak. Liability for damages was admitted and the Trial Court had to decide on the issue of the quantum of damages. After the Trial Court assessed damages for the appellant in the total sum of RM301,250, the Trial Court then proceeded to deduct from that total sum, a sum of RM300,000 which the appellant had received from an insurance company under a general accident policy taken by the respondents for the benefit of the appellant and other employees under the terms of their contract of employment, leaving a paltry judgment sum of only RM1,250. Mohamed Azmi SCJ (as he then was and now a senior member of the Federal Court) delivering the judgment of the then Supreme Court had this to say:

> To put the issue of deductibility beyond doubt in the present appeal, our Parliament has, fortunately for the appellant, introduced s. 28A(1)(a) by Act A308 which came into force on 30 May 1975. The intervention of the new provision goes beyond introducing mere compromise solution against deductibility. We agree with Mr. R.K. Nathan that the plain meaning of the words used in that section should be adopted for the purpose of interpretation. Adopting the strict rule of interpretation, our Parliament in its wisdom has made it crystal clear that any sum paid or payable in respect of personal injury which does not result in death 'under any contract of assurance or insurance' shall not be taken into account in assessing damages. By providing no exception, the effect would be to eliminate altogether deductibility even in border line situations although the injured person has not directly contributed to the insurance scheme.
>
> For the above reasons, it is our opinion that having regard to the nature of the scheme of the policy, the insurance benefits in this case are not deductible both under s. 28A(1)(a) and the common law itself.

Incidentally, s. 28A(1)(a) of the CL Act reads thus:

> (1) In assessing damages recoverable in respect of personal injury which does not result in death, there shall not be taken into account-
>
> (a) any sum paid or payable in respect of personal injury under any contract of assurance or insurance, whether made before or after the coming into force of this Act.

Applying *Ward's* case (*supra*) to the present appeal, the compensation paid to the appellants/ plaintiffs are not deductible and they are caught under proviso (i)(d) of s. 7(3) of the CL Act, which clearly laid down that any sum which has been paid under any written law relating to the payment of any compensation shall not be taken into account in assessing damages. The approach I have taken in interpreting the CL Act is by applying to the fore what Viscount Birkenhead LC said in *Sutters v. Briggs* [1922] 1 AC 1 at p. 8:

> The consequences of this view will no doubt be extremely inconvenient to many persons. But this is not a matter proper to influence the House unless in a doubtful case affording foothold for balanced speculations as to the probable intention of the legislature. Where, as here, the legal issues are not open to serious doubt our duty is to express a decision and leave the remedy (if one be resolved upon) to others.

In the same vein, Lord Edmund-Davies said in *Stock v. Frank Jones (Tipton) Ltd.* [1978] 1 ALL ER 948 at p. 954; [1978] 1 WLR 231 at p. 238:

> ... dislike of the effect of a statute has never been an accepted reason for departing from its plain language. Holt CJ said nearly three centuries ago '... an Act of Parliament can do no wrong, though it may do several things that look pretty odd': see *City of London v. Wood*

> [1701] 12 Mod Rep 669 at pp. 687-688. Accordingly, even if one regarded the policy implicit in (the Act concerned) as open to criticism, (if) the statutory language is clear beyond doubt ... (it) must prevail.

It is germane to set out in *extenso* s. 7(3)(i)(d) of the CL Act and it is as follows:

> 7 (3) The damages which the party who shall be liable under subsection (1) to pay to the party for whom and for whose benefit the action is brought shall, subject to this section, be such as will compensate the party for whom and for whose benefit the action is brought for any loss of support suffered together with any reasonable expenses incurred as a result of the wrongful act, neglect or default of the party liable under subsection (1):
>
> Provided that
>
> (i) in assessing the damages there shall not be taken into account -
>
> (d) any sum which has been or will or may be paid under any written law relating to the payment of any benefit or compensation whatsoever, in respect of the death.

The Sessions Judge must have felt unpalatable to construe proviso (i)(d) of s. 7(3) of the CL Act in its plain language for it would give rise to only one conclusion and it is this: compensation under the Workmen's Compensation Act, 1952 will not bar a dependency claim under s. 7 of the CL Act in respect of loss of support and damages for bereavement under s. 7(3A) of the CL Act nor will such compensation be said to be deductible. For the foregoing reasons, I allow the appeal on the preliminary objection with costs and the case is remitted to the Sessions Court for the trial of the main action. For expediency, the case should be mentioned before the Sessions Court, Johor Bahru on 21 March 1995.